



Billing Code: 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R08-OAR-2015-0493; FRL-9941-46-Region 8]

Approval and Promulgation of Air Quality Implementation Plans; Colorado; Revisions to Common Provisions and Regulation Number 3; Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving State Implementation Plan (SIP) revisions submitted by the State of Colorado on March 31, 2010, May 16, 2012 and May 13, 2013. The revisions are to Colorado Air Quality Control Commission (Commission) Regulation Number 3, Parts A, B and D and Common Provisions Regulation. The revisions include administrative changes to permitting requirements for stationary sources, updates to the fine particulate matter less than 2.5 microns in diameter (PM_{2.5}) implementation rule related to the federal New Source Review (NSR) Program, changes to address previous revisions to Air Pollutant Emission Notice (APEN) regulations that EPA disapproved or provided comments on, revisions to definitions, and minor editorial changes. Also in this action, EPA is correcting a final rule pertaining to Colorado's SIP published on April 24, 2014. In our April 24, 2014 action, regulatory text and corresponding "incorporation by reference" (IBR) materials were inadvertently excluded for greenhouse gas permitting revisions to the Common Provisions Regulation and minor editorial changes to the Common Provisions Regulation and Parts A, B

and D of Regulation Number 3 (adopted October 10, 2010). This action is being taken under section 110 of the Clean Air Act (CAA).

DATES: This rule is effective on [**Insert date 30 days after date of publication in the Federal Register**].

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA-R08-OAR-2015-0493. All documents in the docket are listed on the www.regulations.gov web site.

Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form.

Publicly available docket materials are available either electronically through

www.regulations.gov or in hard copy at the Air Program, Environmental Protection Agency (EPA), Region 8, 1595 Wynkoop Street, Denver, Colorado 80202-1129. EPA requests that if at all possible, you contact the individual listed in the **FOR FURTHER INFORMATION**

CONTACT section to view the hard copy of the docket. You may view the hard copy of the docket Monday through Friday, 8:00 a.m. to 4:00 p.m., excluding federal holidays.

FOR FURTHER INFORMATION CONTACT: Jaslyn Dobrahner, Air Program, U.S.

Environmental Protection Agency (EPA), Region 8, Mail Code 8P-AR, 1595 Wynkoop Street, Denver, Colorado 80202-1129, (303) 312-6252, dobrahner.jaslyn@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

In our notice of proposed rulemaking published on September 14, 2015 (80 FR 55055), EPA proposed to either approve or take no action on revisions to Common Provisions Regulation

and Regulation Number 3, Parts A, B and D submitted by the State of Colorado on March 31, 2010, May 16, 2012 and May 13, 2013. In this rulemaking, we are taking final action on revisions to Common Provisions Regulation which include adding compounds to the definition of “negligibly reactive volatile compounds” (NRVOC), clarifying NRVOC and volatile organic compound (VOC) testing methodologies within the definition of “volatile organic compound,” and revising the definition of “incinerator” along with minor editorial changes. We are also taking final action on revisions to Regulation Number 3, Parts A, B and D which include revisions to State permitting requirements for stationary sources to incorporate changes to the federal NSR Program related to PM_{2.5}, revisions to address past rule revisions that were disapproved or commented on by EPA, administrative revisions to permitting requirements for stationary sources in Colorado, and deferral of the permitting requirements for biogenic sources of carbon dioxide emissions to ensure consistency with federal greenhouse gas permitting requirements. The revisions also make several miscellaneous changes along with minor editorial changes. The reasons for our approval and taking no action are provided in detail in the proposed rule (80 FR 55055, September 14, 2015).

In this action, EPA is also taking final action to correct a final rule published in the Federal Register on April 24, 2014 (79 FR 22772). In this rule, we inadvertently did not include regulatory text and corresponding IBR materials for our approvals to (1) greenhouse gas permitting revisions to Common Provisions Regulation, and (2) minor editorial changes to the Common Provisions Regulation and Parts A, B and D of Regulation Number 3 (adopted October 10, 2010).

II. Response to Comments

We received one comment on our proposed rule.

Comment: The State of Colorado requested EPA approve provisions that we proposed to exclude from the IBR material related to tertiary butyl acetate within the State's Common Provisions Regulation. The State concludes that these provisions are consistent with federal requirements when read in conjunction with Regulation Number 3, Part A, Appendix B, which has been approved by EPA.

Response: Under a final rule promulgated on November 29, 2004 (69 FR 69298), tertiary butyl acetate is excluded from the definition of VOC for purposes of VOC emissions limitations and VOC content requirements, but continues to be defined as a VOC for purposes of all recordkeeping, emissions reporting and inventory requirements which apply to VOCs. We agree with the State that the federal reporting requirements for tertiary butyl acetate are met through the State's inclusion of tertiary butyl acetate in Appendix B of the Commission's Regulation Number 3, Part A which ensures that this compound would be reported to the State as a distinct class, separate from other VOCs. Therefore, we are approving within Common Provisions Regulation the words "Tertiary Butyl Acetate (2-Butanone)" in the definition "NRVOCs" and the last sentence in the definition of "VOC" stating the photochemical dispersion modeling requirement for tertiary butyl acetate.

III. Final Action

For the reasons expressed in the proposed rule, EPA is approving revisions to sections I.A., I.B., I.C., I.D., I.E., I.F., I.G., II.B., II.C., II.E.2. and II.H of the State's Common Provisions Regulation from the March 31, 2010 submittal as shown in Table 1 below. We are also approving revisions to Parts A, B and D of the State's Regulation Number 3 from the May 16,

2012 and May 13, 2013 submittals (Table 1), except for those revisions we are not taking action on as represented in Table 2 below. Finally, EPA is correcting regulatory text and IBR published in the Federal Register on April 24, 2014 (79 FR 22772).

A comprehensive summary of the revisions in Colorado's Common Provisions Regulation and Regulation Number 3 Parts A, B and D organized by EPA's action, reason for "no action" and submittal date are provided in Table 1 and Table 2 below.

Table 1 - List of Colorado Revisions that EPA is Approving

Revised Sections in March 31, 2010; May 16, 2012; and May 13, 2013 Submissions that EPA is Approving
<u>March 31, 2010 submittal</u> - Common Provisions Regulation: I.A., I.B., I.C., I.D., I.E., I.F., I.G., II.B., II.C., II.E.2., II.H.
<u>May 16, 2012 submittal</u> - Regulation Number 3, Part A: I.B.17., I.B.28.c., I.B.44.b.(i), I.B.44.e.(ii)(B), II.C.2.b.(ii), II.D.1.q., II.D.1.ppp., II.D.1.uuu., II.D.1.dddd.
<u>May 13, 2013 submittal</u> - Regulation Number 3, Part A: I.A., I.B.7., I.B.28., I.B.43., II.D.1., II.D.1.dddd., V.I.2., VI.B.5., Appendix B.
<u>May 16, 2012 submittal</u> - Regulation Number 3, Part B: II.D.1.c., II.D.1.m., III.G.1.
<u>May 13, 2013 submittal</u> - Regulation Number 3, Part B: III.C.1.a.
<u>May 16, 2012 submittal</u> - Regulation Number 3, Part D: II.A.24.f., II.A.26.c., II.A.26.e.-II.A.26.k. (re-numbering), II.A.42., III.B., V.A., V.A.3., V.A.4., VI.A.2.a., VI.A.4., VI.B.3.a.(ii) and (iv)-(ix), VI.B.3.a.(iii) in reference to removal of total suspended particulate matter monitoring exemption, VI.B.3.c., VI.B.3.e., VI.D.2., X.A.1., X.A.2., XIII.B., XIII.D.
<u>May 13, 2013 submittal</u> - Regulation Number 3, Part D: I.B.2., I.B.4., I.C., II.A.4.c., II.A.17., II.A.22.d.(ix)(B), II.A.40.5.(b), V.A.3.b., V.A.6., VI.B.3.d., VI.B.3.e.

Table 2 - List of Colorado Revisions that EPA is Taking No Action On

Revised Sections in March 31, 2010; May 16, 2012; and May 13, 2013 Submissions that EPA is Taking No Action On

Revised Section	Reason for “No Action”				
	Revision in State-only section of SIP	Revision in current section of SIP	Revision in disapproved section of SIP	Revision superseded by revision in February 20, 2015 State submittal (will be reconciled in future rulemaking)	Revision to be made in future State submittal
<u>March 31, 2010 submittal - Common Provisions Regulation:</u>					
II.J.		x	x		
<u>May 16, 2012 submittal - Regulation Number 3, Part A:</u>					
I.B.31.c.	x				
I.B.31.d.	x				
II.D.1.sss.			x		
II.D.1.ttt.			x		
II.D.1.xxx.			x		
II.D.1.ffff.			x		
<u>May 13, 2013 submittal - Regulation Number 3, Part A:</u>					
I.B.31.d.	x				
<u>May 16, 2012 submittal - Regulation Number 3, Part D:</u>					
II.A.5.a.		x			
II.A.5.b.		x			
II.A.23.		x			
II.A.25.		x			

II.A.26.d. revision to PM _{2.5} net emission increase					X
II.A.38.		X			
VI.A.2. introductory paragraph					X
VI.A.2.c.				X	
VI.B.3.a.(iii) in reference to PM _{2.5} monitoring exemption				X	
VI.B.3.d.				X	
May 13, 2013 submittal - Regulation Number 3, Part D:					
II.A.1.a.			X		
II.A.1.c.			X		
II.A.1.e.			X		
II.A.20.b.			X		
II.A.22.			X		
II.A.23.c.		X			
II.A.26.a.(i)			X		
II.A.26.f.iii.			X		
II.A.38.g.			X		
II.A.40.5. introductory paragraph			X		
II.A.40.5.(a)			X		
VI.A.1.c.			X		

IV. Incorporation by Reference

In this rule, the EPA is including regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is incorporating by reference Colorado Air Quality Control Commission regulations discussed in section III, Final Action of this preamble. The EPA has made, and will continue to make, these documents generally available electronically through www.regulations.gov and/or in hard copy at the appropriate EPA office (see the **ADDRESSES** section of this preamble for more information).

V. Statutory and Executive Orders Review

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable federal regulations (42 USC 7410(k), 40 CFR 52.02(a)). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this final action merely approves some state law as meeting federal requirements; this final action does not impose additional requirements beyond those imposed by state law. For that reason, this final action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, Oct. 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 USC 3501 et seq.);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 USC 601 et seq.);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR

43255, Aug. 10, 1999);

- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 USC 272 note) because application of those requirements would be inconsistent with the CAA; and,
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, Feb. 16, 1994).

The SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

The Congressional Review Act, 5 U.S.C. 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the

U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the Federal Register. A major rule cannot take effect until 60 days after it is published in the Federal Register. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[Insert date 60 days after date of publication in the Federal Register]**. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See CAA section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Greenhouse gases, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Authority: 42 U.S.C. 7401 et seq.

Dated: December 21, 2015.

Shaun L. McGrath,
Regional Administrator,
Region 8.

40 CFR part 52 is amended to read as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 et seq.

Subpart G - Colorado

2. Section 52.320(c), the Table is amended:

- a. Under “5 CCR 1001-02 Common Provision Regulation” by revising entries “I” and “II”;
- b. Under “5 CCR 1001-05, Regulation Number 3, Part A, Concerning General Provisions Applicable to Reporting and Permitting” by revising entries “I” , II” “V”, “VI”, “VIII”, and “Appendix B”;
- c. Under “5 CCR 1001-05, Regulation Number 3, Part B, Concerning Construction Permits” by revising entries “II” and “III”; and
- d. Under “5 CCR 1001-05, Regulation Number 3, Part D, Concerning Major Stationary Source New Source Review and Prevention of Significant Deterioration” by revising entries “I”, “II”, “III”, “V”, “VI”, “X” “XIII”, “XIV”, and “XV”

The revisions read as follows:

§ 52.320 Identification of plan.

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(c) * * *

Title	State effective date	EPA Effective date	Final rule citation/date	Comments
*	*	*	*	*
5 CCR 1001-02, Common Provisions Regulation				
I. Definitions, Statement of Intent, and General Provisions Applicable to all Emission Control Regulations adopted by the Colorado Air Quality Control Commission	1/30/10 12/15/10	[Insert Federal Register date of publication]	[Insert Federal Register citation], [Insert Federal Register date of publication]	Except I.G. Definitions, “Construction” and “Day”
II. General	1/30/10	[Insert Federal Register date of publication]	[Insert Federal Register citation], [Insert Federal Register date of publication]	Except II.I; II.J.5.
*	*	*	*	*
5 CCR 1001-05, Regulation Number 3, Part A, Concerning General Provisions Applicable to Reporting and Permitting				
I. Applicability	12/15/2010 12/15/2011 2/15/2013	[Insert Federal Register date of publication]	[Insert Federal Register citation], [Insert Federal Register date of publication]	Except I.B.31.c. and I.B.31.d.

II. Air Pollutant Emission Notice (APEN) Requirements	12/15/2010 12/15/2011 2/15/2013	[Insert Federal Register date of publication]	[Insert Federal Register citation], [Insert Federal Register date of publication]	
* * * * *				
V. Certification And Trading Of Emission Reduction Credits Offset And Netting Transactions	12/15/2010 2/15/2013	[Insert Federal Register date of publication]	[Insert Federal Register citation], [Insert Federal Register date of publication]	
VI. Fees	12/15/2010 2/15/2013	[Insert Federal Register date of publication]	[Insert Federal Register citation], [Insert Federal Register date of publication]	
* * * * *				
VIII. Technical Modeling and Monitoring Requirements	12/15/2010	[Insert Federal Register date of publication]	[Insert Federal Register citation], [Insert Federal Register date of publication]	
* * * * *				

Appendix B, Non-criteria Reportable Pollutants (Sorted by BIN)	12/15/2010 2/15/2013	[Insert Federal Register date of publication]	[Insert Federal Register citation], [Insert Federal Register date of publication]	
5 CCR 1001-05, Regulation Number 3, Part B, Concerning Construction Permits				
* * *	* * *	* * *	* * *	
II. General Requirements For Construction Permits	12/15/2010 12/15/2011	[Insert Federal Register date of publication]	[Insert Federal Register citation], [Insert Federal Register date of publication]	
III. Construction Permit Review Procedures	12/15/2010 12/15/2011 2/15/2013	[Insert Federal Register date of publication]	[Insert Federal Register citation], [Insert Federal Register date of publication]	
5 CCR 1001-05, Regulation Number 3, Part D, Concerning Major Stationary Source New Source Review and Prevention of Significant Deterioration				
I. Applicability	12/15/2010 2/15/2013	[Insert Federal Register date of publication]	[Insert Federal Register citation], [Insert Federal Register date of publication]	

II. Definitions	12/15/2010 12/15/2011 2/15/2013	[Insert Federal Register date of publication]	[Insert Federal Register citation], [Insert Federal Register date of publication]	Except II.A.26.d., the phrase “and only PM _{2.5} emissions can be used to evaluate the net emissions increase for PM _{2.5} ”
III. Permit Review Procedures	12/15/2011	[Insert Federal Register date of publication]	[Insert Federal Register citation], [Insert Federal Register date of publication]	
* * * * *				
V. Requirements Applicable to Nonattainment Areas	12/15/2011 2/15/2013	[Insert Federal Register date of publication]	[Insert Federal Register citation], [Insert Federal Register date of publication]	
VI. Requirements applicable to attainment and unclassifiable areas and pollutants implemented under Section 110 of the Federal Act (Prevention of Significant Deterioration Program)	12/15/2010 12/15/2011 2/15/2013	[Insert Federal Register date of publication]	[Insert Federal Register citation], [Insert Federal Register date of publication]	Except for VI.A.1.c., the phrase “for phases that commence construction more than 18 months after the initial granting of the permit”; VI.A.2., the phrase “either Section

				VI.A.2.a. or b., as clarified for any relevant air pollutant, in Section VI.A.2.c.”; VI.A.2.c.; VI.B.3.a.(iii) in reference to PM _{2.5} monitoring exemption; and VI.B.3.d.	
*	*	*	*	*	*
X. Air Quality Limitations	12/15/2011	[Insert Federal Register date of publication]	[Insert Federal Register citation], [Insert Federal Register date of publication]		
*	*	*	*	*	*
XIII. Federal Class I Areas	12/15/2011	[Insert Federal Register date of publication]	[Insert Federal Register citation], [Insert Federal Register date of publication]		
XIV. Visibility	12/15/2010	[Insert Federal Register date of publication]	[Insert Federal Register citation], [Insert Federal Register date of publication]		

XV. Actuals PALs	12/15/2010	[Insert Federal Register date of publication]	[Insert Federal Register citation], [Insert Federal Register date of publication]	
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